

N.D.A.G. Letter to Hoy (Jan. 13, 1986)

January 13, 1986

Mr. Robert G. Hoy
Cass County State's Attorney
Cass County Courthouse
P.O. Box 2806
Fargo, ND 58108

Dear Mr. Hoy:

Thank you for your letter of November 13, 1985, on the issue of whether N.D.C.C. § 23-06-03 permits the county to provide and pay for cremation of indigent decedents in lieu of burial.

N.D.C.C. §23-06-03 provides, in part:

23-06-03. DUTY OF BURIAL. The duty of burying the body of a deceased person devolves upon the following persons:

* * * *

4. If the deceased is survived by no person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for poor relief purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial. The cost of the burial shall be paid by the county social service board, subject to the following:
 - a. The sum of six hundred dollars shall be allowed for personal property and burial services furnished by a funeral director or funeral home,
 - b. The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.
 - c. The cost of the grave box or vault, not to exceed the sum of two hundred thirty-five dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.

- d. The cost of a grave space, not to exceed the sum of one hundred seventy-five dollars.
- e. Any grave opening and closing expenses, not to exceed the sum of one hundred seventy-five dollars.

Payment for services rendered or personal property furnished under subdivisions a, b, and c shall be made to the funeral home or funeral director furnishing the same, while payment for a grave space, services rendered, or personal property furnished under subdivisions d and e shall be made to the cemetery furnishing the same.

There is no specific reference in this section to cremation as an alternative to burial. Other sections in N.D.C.C. Ch. 23-06 indicate that the legislature drew a distinction between burial and cremation in that the statutes refer to a body being "buried or cremated." See, e.g., N.D.C.C. §§ 23-06-04, 23-06-17.

Therefore, based upon the legislative distinctions between "burial" and "cremation," N.D.C.C. §23-06-03 does not authorize the county social service board to provide cremation as an alternative to burial of indigent decedents. The Cass County Social Service Board may wish to seek specific authority for payment of cremation costs in the next legislative session.

Sincerely,

Nicholas J. Spaeth

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